Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

C.R. No. 96 /2006

APPLICANTS:

1. Chhotu Dewangan, S/o Khorbahra Dewangan, aged about 16 years, Through- Natural Guardian & Father Khorbahra, S/o Mangtu Dewangan.
2. Khorbahra, S/o Mangtu Dewangan, aged about 52 years,

Both resident of Village- Kharora, Thana Kharora, District- Raipur (C.G.)

P.R. No. 1932/06 Presented by Shri Suresh Tandan dated 07.12.06

VERSUS

NON -APPLICANTS:

1. Smt Urmilabai, Wd/o Jagat Ram Dewangan (Koshta) Aged about 30 years
2. Pawan Kumar, S/o Jagat Ram Dewangan (Koshta), aged about 2 years, Minor Through-

Natural Guardian & Mother
Smt. Urmilabai Wd/o Jagat Ram Dewangan,
Occupation- Housewife
R/o Sirri, Post- Kanki,
Thana Kharora,
Tahsil- Tilda, District-Raipur (C.G.)

3. General Public

4. Branch Manager,
Dena Bank, Branch-Khrora, District-Raipur (C.G.)

CIVIL REVISION UNDER SECTION 384 (3) OF THE INDIAN SUCCESSION ACT, 1925.

A.F.R. (47)

HIGH COURT OF CHHATTISGARH AT BILASPUR

C.R.No. 98 of 2006

Chhotu Dewangan & another

Vs.

Smt. Urmilabai and three others.

Post for Order: 17.11.2006

Sd/-
Dilip Raosaheb Deshmukh
Judge
17.11.2006

A.F.R. 48

HIGH COURT OF CHHATTISGARH AT BILASPUR

Before: Hon'ble Shri Justice Dilip Raosaheb Deshmukh

Civil Revision No.98/2006

Chhotu Dewangan & another
Vs.

Smt. Urmilabai and three others.

Shri J.K. Gupta, Counsel for the applicants.
Shri M.K.Bhaduri, Counsel for respondents No.1 & 2.

O R D E R

(Delivered on this 17th day of November, 2006)

This Civil Revision is directed against an order dated 19th June 2006 passed by 11th Additional District Judge (F.T.C.), Raipur, C.G. in Misc. Civil Appeal No. 05 of 2006 whereby the Order passed in Succession Case No.36/2003 by 6th Civil Judge, Class-1, Raipur directing issuance of Succession Certificate in favour of non-applicants, was affirmed.

2. Admittedly, non-applicant No.1-Smt. Urmilabai is the widow and Pawan Kumar, non-applicant No.2 is the son of late Jagat Ram Dewangan who had two deposits of the maturity value of Rs.65049/- and Rs./-14,902/- in Branch Office Dena Bank, Kharora on his death on 11.04.2003. Jagat Ram Dewangan was unmarried at the time of making the deposit and had nominated his parents Parthaneen and Mangtu Dewangan and nephew minor Chhotu Dewangan through guardian Rameshwar, son of Khorbahra, the applicant No.1.

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3. Non-applicant Urmila Bai and her minor son Pawan filed an application under Section 372 of Indian Succession Act for obtaining Succession Certificate for the aforesaid amount. Notice was issued by publication in the local newspaper. The applicants/revisioners did not raise any objection before the Court. The Branch Manager, Dena Bank, Kharora, however, raised an objection before the Court that the deceased had in one deposit nominated Chhotu through guardian Rameshwar and Baratnin Dewangan and Mangturam Dewangan in the other, who were entitled to receive the amounts deposited by Jagat Ram. Baratnin Dewangan is dead.

4. The non-applicant Urmila Bai adduced her evidence and examined witnesses Bhukhanlal A.W.2 and Mansha Ram A.W.3 to prove that she was the widow and Pawan Kumar was the son of Jagat Ram. The 6th Civil Judge Class-1, Raipur vide order dated 28.08.2004 rejected the contention of the Branch Manager, Dena Bank, Kharora that the amount was payable to the nominees and issued Succession Certificate in equal share in favour of the non-applicants.

5. Aggrieved by the said order, the applicants herein preferred Miscellaneous Civil Appeal No. 05 of 2006 before the 11th Additional District Judge, Raipur, which was dismissed vide order dated 19.06.2006. It was held that the appeal was barred by limitation and Urmila Bai and Pawan Kumar being the legal heirs of Jagat Ram were entitled to receive the amount deposited by late Jagat Ram Dewangan in Dena Bank, Kharora Branch.

6. The only point urged by Shri J.K.Gupta, learned counsel for the applicants in this Civil Revision, is that the nominees were entitled to

the issuance of Succession Certificate to the exclusion of the actual heirs mentioned in Schedule 1 of Section 8 of Hindu Succession Act. On the other hand, Shri Malay Kumar Bhaduri, learned counsel for the non-applicants No.1 & 2 placed reliance on R.S.Chaturvedi & Others v. Snehlata Chaturvedi[1], Smt. Sarbati Devi and another v. Smt. Usha Devi[2] and Puran Prasad Sharma v. Rajesh s/o Radheshyam and others[3] while contending that in summary proceedings for grant of Succession Certificate under Section 372 of Indian Succession Act, the mere fact of nomination made by late Jagat Ram Dewangan at the time of making the deposit, does not take away the right of the legal heirs to obtain a Succession Certificate in their favour.

7 Having heard rival submissions, I find no merit in this Civil Revision. Proceeding under Section 372 of the Indian Succession Act is of summary nature. The applicants herein did not participate in the summary proceedings despite issuance of a publication in local newspaper by the Court. The evidence led by the non-applicants herein before the lower Court clearly proved that they were the legal heirs of Jagat Ram, as mentioned in Schedule 1 to Section 8 of the Hindu Succession Act and that nomination in favour of the non-applicants was made by Jagat Ram Dewangan prior to his marriage to Urmila Bai. In R.S.Chaturvedi (supra 1), it was held that a nomination without conferring any legal right to inherit the property by succession only permits the person in whose favour nomination has been made to receive the amount. In Sarbati Devi and another (supra 2), it was held by the Supreme Court that a mere nomination made under Section 39 of Insurance Act does not exclude the legal heirs from claiming the amount in

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1. 2005 (2) C.G.L.J. 2. AIR 1984 SC 346 3. 1997 (2) M.P.L.J. 419

accordance with law of succession governing them. In Puran Prasad Sharma (supra 3), it was held that proceedings under Section 372 of Indian Succession Act are summary proceedings and upon issuance of Succession Certificate in favour of legal heirs the remedy of filing a separate Civil Suit for declaration of their right was available to the nominees. The widow and son are the legal heirs of the deceased in accordance with Schedule 1 of Section 8 of the Hindu Succession Act 1956. On the basis of the evidence adduced before the learned Civil Judge Class-1, Raipur, in Succession Case No. 36 of 2003, the learned Civil Judge rightly directed the issuance of a Succession Certificates in favour of the widow and the son of the deceased who were the legal heirs, as mentioned in Schedule 1 of Section 8 of the Hindu Succession Act. The mere fact of nomination made by Jagat Ram Dewangan did not create any right to obtain Succession Certificate in favour of the nominees to the exclusion of the actual legal heirs, as mentioned in Schedule 1 to Section 8 of Hindu Succession Act. In this view of the matter, the impugned order is well merited and does not call for any interference.

8. The Civil Revision is accordingly dismissed as devoid of merit.

Sd/-
Dilip Raosaheb Deshmukh
Judge